

# **Exhibit E**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION

-----  
Christopher Fain, individually and on behalf of all  
others similarly situated, et al.,

Plaintiffs,

vs.

CIVIL ACTION NO. 3:20-cv-00740

William Crouch, et al.,

Defendants.  
-----

REMOTE DEPOSITION OF COMMISSIONER CYNTHIA BEANE

DATE: March 29, 2022

TIME: 8:00 a.m. CST

PLACE: Veritext Virtual Videoconference

REPORTED BY: KELLEY E. ZILLES, RPR (Via Videoconference)

JOB NUMBER: 5096149

APPEARANCES

On Behalf of the Plaintiffs (Via Videoconference):

CARL CHARLES, ESQ.

TARA L. BORELLI, ESQ.

Lambda Legal Defense and Education Fund, Inc.

158 West Ponce De Leon Ave., Suite 105

Decatur, Georgia 30030

470.225.5341

ccharles@lambdalegal.org

tborelli@lambdalegal.org

AVATARA SMITH-CARRINGTON, ESQ.

Lambda Legal Defense and Education Fund, Inc.

3500 Oak Lawn Avenue, Suite 500

Dallas, Texas 75219

214.219.8585

asmithcarrington@lambdalegal.org

NICOLE J. SCHLADT, ESQ.

Nichols Kaster PLLP

80 South 8th Street, Suite 4700

Minneapolis, Minnesota 55402-2224

612.256.3291

nschladt@nka.com

1 WALT AUVIL, ESQ.

2 The Employment Law Center, PLLC

3 1208 Market Street

4 Parkersburg, West Virginia 26101

5 304.485.3058

6 auvil@theemploymentlawcenter.com

7  
8 On Behalf of Defendants William Crouch; Cynthia Beane;  
9 and West Virginia Department of Health and Human  
10 Resources, Bureau for Medical Services (Via  
11 Videoconference):

12 KIMBERLY M. BANDY, ESQ.

13 LOU ANN S. CYRUS, ESQ.

14 Shuman McCuskey Slicer, PLLC

15 1411 Virginia Street East, Suite 200

16 Charleston, West Virginia 25301

17 304.345.1400

18 kbandy@shumanlaw.com

19 lcyrus@shumanlaw.com

20  
21  
22  
23 NOTE: The original deposition transcript will be  
24 delivered to Tara Borelli, Esq., as the taking attorney.  
25

1 occurred in West Virginia and we put a modifier on so we  
2 can get those claims paid.

3 Q. Does BMS track a gender marker for its members?

4 A. Meaning male, female?

5 Q. Correct, including male and female. Does BMS  
6 have a gender marker of male or female or any other kind  
7 of gender marker on each member?

8 A. Yes, when you apply for Medicaid you say whether  
9 you're male or female, that's in the system.

10 Q. And just to go back to our questions a moment  
11 ago about that modifier. So the modifier doesn't,  
12 there's no modifier that's attached to transgender  
13 members generally, it sounds like that modifier that we  
14 were discussing uses one kind to refer access to  
15 pregnancy care of a transgender man, is that correct?

16 A. You are correct.

17 Q. So back to gender markers. You testified that  
18 each Medicaid member has to designate a marker of male  
19 or female when they apply for Medicaid, is that correct?

20 A. Correct.

21 Q. And can members change that gender marker at any  
22 time after they have originally designated it?

23 A. I would assume so. I don't think we have  
24 anything stopping that, but I would, I honestly don't  
25 know if that's occurring or if that's happening. I

1 works with that does research for Dr. Becker, and I know  
2 that Dr. Becker was on the call.

3 Q. So on a slightly different topic, are you  
4 familiar with what social transition refers to?

5 A. I'm sorry, did you say -- I can't hear you.

6 Q. Are you familiar with what social transition  
7 refers to?

8 A. I am not.

9 Q. So that would mean BMS does not have a position  
10 on whether transgender children should be prevented from  
11 socially transitioning, correct?

12 A. I don't believe we have a position. I'm not  
13 even sure what it is.

14 Q. And are you familiar with what is sometimes  
15 referred to as conversion therapy?

16 A. For someone who is gay, like pray the gay away?

17 Q. Yes, it can be referred to that. And for  
18 purposes of this question, assume that it's applying  
19 that principle to be transgender, so assume --

20 A. Yes, I have heard of that.

21 Q. Does BMS have a position on whether transgender  
22 children should be subjected to conversion therapy?

23 A. No one should be subjected to that therapy.

24 Q. Thank you. All right. If you are good to keep  
25 going for a little while, then I think I'll turn to our